

Specialty Waste & Wasteco, Incorporated and Willie Frank Leslie. Case 10-CA-18366

8 March 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND HUNTER

On 18 April 1983 Administrative Law Judge J. Pargen Robertson issued the attached decision. The General Counsel filed exceptions and a supporting brief, and the Respondents filed cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions and to adopt his recommendation.

ORDER

The recommendation of the administrative law judge is adopted and the complaint is dismissed.

¹ The General Counsel has excepted to the finding that Respondent Wasteco, Incorporated did not constitute a single employer with Respondent Specialty Waste. The exceptions find no support in the record. The Respondents' exceptions were contingent on an unfavorable ruling by the Board on the single employer issue and thus need not be considered here.

DECISION

STATEMENT OF THE CASE

J. PARGEN ROBERTSON, Administrative Law Judge. This case was heard in Atlanta, Georgia, on February 9, 1982. The complaint, which issued on September 16, 1982, alleges that the Respondent violated Section 8(a)(1) of the Act by discharging employee William Frank Leslie on June 4, 1982.

On the entire record and from my observation of the witnesses, and after due consideration of oral argument and briefs filed by General Counsel and Respondent, I make the following

Findings

The General Counsel alleged that the Board has jurisdiction over the Employer herein, Specialty Waste, by virtue of Specialty and another Employer, Wasteco Incorporated, being a single-integrated business enterprise. The General Counsel also alleges that Specialty Waste violated the National Labor Relations Act by discharging employee Willie Frank Leslie because of Leslie's concerted activities.

The Respondent quarrels with the General Counsel's assertions regarding jurisdiction and unfair labor practices herein. Moreover, the Respondent contends that

service of the charge and complaint were never effected on Wasteco, Incorporated.

I find that the Respondent is correct in its contention that the General Counsel did not show that Specialty engaged in interstate commerce.

No evidence was offered to prove that Specialty Waste engaged in commerce within the meaning of Section 2(6) and (7) of the Act. Instead, the General Counsel relied on a stipulation that Wasteco, Incorporated, satisfied the Board's jurisdictional standards during the 12 months before complaint issued. Therefore, the General Counsel's allegation that Specialty and Wasteco constitute a single-integrated business enterprise is indispensable to the establishment of jurisdiction over Specialty.

Specialty and Wasteco are each engaged in the collection, removal, and disposal of waste. Specialty serves residential customers, and Wasteco services commercial customers.

Specialty is a sole proprietorship, owned by Howard Burnett.

Wasteco was incorporated in July 1981, and its officers included Howard Burnett. At the time its incorporation, Burnett was the vice president of Wasteco. Wasteco's president was Ronald Turner. H. Barry Gibbs was Wasteco's secretary-treasurer.

The evidence is undisputed that, during November 1981, Ronald Turner and Howard Burnett discussed the possibility of Wasteco purchasing Specialty Waste. Turner and Burnett agreed upon a price with the understanding that Turner would operate Specialty on a temporary trial basis to determine the desirability of consummating the purchase by Wasteco. From December 1, 1981, until April 30, 1982, Wasteco, through Turner, operated Specialty. During that period, Turner carefully designated Specialty's income and outgo by indications on deposit slips and checks. However, after managing Specialty for the 5-month period, Turner decided against purchasing Specialty. After April 30, Wasteco continued to receive some income through Specialty during May and June 1982 for services billed before April 30. Additionally, Specialty agreed to pay Wasteco, on an installment basis, for an investment Wasteco had made in curb pickup containers which were retained by Specialty. However, since April 30, 1982, Specialty has been managed exclusively by Howard Burnett.

As to Wasteco, Burnett testified without rebuttal that he has never had, nor exercised, any authority in its management or operations. He owned stock and held the position of vice president until October 1982 when he sold his interest in Wasteco.

By application of the criteria normally considered by the Board in integrated enterprise issues, it is apparent that Specialty and Wasteco did not constitute a single-integrated enterprise, except during the December 1981 through April 1982 period. During that period, there was an interrelation of their operations, and the companies had common management, and financial control, and centralized control over labor relations policy [*NLRB v. Triumph Curing Center*, 571 F.2d 462, 468 (9th Cir. 1978); *Edward C. Kelly Co.*, 230 NLRB 337, 338-339 (1977); *Radio & Television Broadcast Technician Local*

Union 1264 v. Broadcast Service of Mobile, 380 U.S. 255 (1965); *Friederich Truck-Service*, 259 NLRB 1294, 1300 (1982)].

However, the record fully supports Specialty's contention that its trial operation from December through April 1982, by Wasteco, was an arm's-length transaction which was terminated at the end of April. Although funds were received by Wasteco in May or June 1982 in satisfaction of billings for Specialty services before April 30, the record demonstrated that the above-mentioned integrated enterprise indicia were not satisfied beyond April. Evidence of interaction between the two entities after April 30 is minimal. Although Specialty borrowed a Wasteco truck on one occasion during an emergency, on another occasion Specialty took the same action of borrowing a truck during an emergency from another unrelated employer. Since April 30, 1982, Specialty and Wasteco have operated as totally separate entities.

Therefore, the evidence shows that before December 1981 and after April 1982 Specialty and Wasteco did not constitute a single-integrated enterprise. The December through April 1982 operation was temporary, not designed to become permanent absent an agreement to consummate the sale of Specialty to Wasteco. That condition was never satisfied and there never existed a permanent status which would qualify the two entities as a single-integrated enterprise. Therefore, I find that the evidence failed to prove that Specialty and Wasteco constitute a single-integrated employer at any time material herein.

Moreover, even if a single-integrated employer status existed from December 1981 to April 30, 1982, that period preceded all of the alleged activity in this proceeding. The complaint alleges an illegal discharge on June 4, 1982. No other unfair labor practices are alleged. The unfair labor practice charge was filed on July 19, 1982, and the complaint issued on September 16, 1982. All those dates fell after the brief period of Wasteco's operation of Specialty. Therefore, it is clear that a single integrated status did not exist on the crucial dates herein.

In view of the above, and the evidence which clearly demonstrates that the Employer involved in the employment and discharge of the alleged discriminatee, Willie Frank Leslie, was exclusively Specialty Waste, it is apparent that the General Counsel has failed to establish the jurisdictional basis for its action. No evidence was offered to show that Specialty Waste engaged in interstate commerce and no evidence was offered to show that Specialty Waste satisfied the Board's commerce requirements. Such evidence is indispensable in view of my determination that Specialty is not integrated with Wasteco.

On the basis of the above, I find that this Agency lacks jurisdictional authority to proceed against Specialty Waste. The complaint fails to state cause of action against Wasteco even though Wasteco is also named. Specialty, not Wasteco, was the exclusive Employer of the one alleged discriminatee. No unfair labor practices were alleged against Wasteco.

Therefore, I recommend that the complaint be dismissed in its entirety.